STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 11815 by Calaveras Cement Company to Appropriate Water from Esperanza Creek Tributary to North Fork of Calaveras River in Calaveras County for Industrial Purposes.

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Decision A. 11815 D. 640

Decided December 27, 1949

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON JULY 19, 1949:

E. M. Backer and J. C. Slater	Applicant's Representatives
Willard A. Hughes	Protestant
John A. Huberty	"
Walter R. Huberty	"
Dewey J. Fischer	"
Alex Papersky	"
John Lombardi	"
A. S. Wheeler	Senior Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

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General Description of the Project

The application contemplates the appropriation of 2.5 cubic feet per second to be applied directly from November 1 to May 1 of each

season and 100 acre feet per annum to be collected between November 1 and May 1 of each season and stored pending later use. The use to which the water is to be applied is industrial. The point of diversion for direct application is described as being located within Lot 10 of Section 6, T 5 N, R 13 E, M.D.B.&M., the point of diversion to storage within Lot 7 of Section 7 of the same township. Direct diversion is to be effected by pumping, for which a 1200 gallon per minute plant is contemplated. Stored water is to be impounded by a concrete overflow-type dam, 40 feet high and 250 feet long. The resultant reservoir (to be called Mein Reservoir) is to have a surface area of 5 acres or more and a capacity of 100 acre feet. The conduit is to be a 10 inch diameter "spiweld" pipe, 73,000 feet long. The proposed place of use is a cement plant located within the W½ SE¼ of Section 29, T 4 N, R 12 E, M.D.B.&M.

Protests

Willard A. Hughes protested, claiming use of Esperanza Creek for stockwatering, for subirrigation and as a fire break. He contends that no water should be diverted during the dry months, describes his place of use as lying within Section 2 of T 5 N, R 12 E, M.D.B.&M., and states that his protest may be disregarded if no water is diverted from June until December.

John A. and Walter R. Huberty protested, claiming that the proposed diversion will cause Esperanza Creek to go dry during the summer months. They claim both riparian and appropriative rights, beneficial use in stockwatering and irrigation. They describe their point of diversion in lying within Section 6 of T 4 N, R 12 E, M.D.B.&M., and state that their protest may be disregarded if the applicant agrees not to divert during periods from May 15 to November 1.

Dewey J. Fischer claims use of water for stockwatering and irrigation, based upon riparian rights and prior appropriation, his point of diversion being located within Section 20 of T 5 N, R 12 E, M.D.B.&M. He states that his protest may be disregarded if water is not diverted from May 15 to November 1 of each year.

Martin J. and Martin E. Fischer protested, claiming use from Esperanza Creek for stockwatering under both riparian and prior appropriative rights. They state that their protest may be disregarded if the applicant agrees not to disturb the natural flow of the stream from May 15 to November 1 of each year.

Alex and Elizabeth Papersky claim to divert at a point within Section 6 of T 4 N, R 12 E, M.D.B.&M. for domestic and stockwatering purposes, both as riparian owners and as appropriators. They protested that the proposed diversion will cause Esperanza Creek to go dry during the summer months. They state that their protest may be disregarded if the applicant agrees not to divert from May 15 to November 1 of each year.

John Lombardi claims to divert at a point within Section 17 of T 5 N, R 12 E, M.D.B.&M., for stockwatering and irrigation, as a riparian owner and as an appropriator. He protested that the proposed diversion willimpair his water supply but states that his protest may be disregarded if the applicant refrains from diverting from May 1 to November 1 of each year.

Fred Lombardi claims use of Esperanza Creek under a riparian right, for watering livestock during summer and fall months. He implies that the proposed appropriation would prevent such use, but states that his protest may be disregarded if the applicant will agree not to disturb the natural flow of the stream from May 1 to November 1 of each year.

The California State Fish and Game Commission protested, alleging

that the proposed appropriation would result in the destruction of trout. It asserts that the amount applied for is at times greater than the flow of the stream, that flow having been but 0.75 cubic foot per second, according to its measurement, on August 7, 1947. It states that its protest may be disregarded if a clause is inserted in such permit as may be issued providing for the release by the permittee into the natural stream channel immediately below the point of appropriation of 0.75 cubic foot per second, or the natural flow immediately above the appropriation, whichever is less.

The applicant answered the several protests by stating that the protestants' points of diversion and places of use lie along Calaveras River below the junction of Esperanza Creek therewith, that tributaries other than Esperanza Creek supply water for the protestants' uses, that the flow of the streams in question is flashy, the flow of Calaveras River sometimes ceasing entirely and the flow of Esperanza Creek receding to 0.20 cubic foot per second or less, that always when 0.75 cubic foot per second is flowing in Esperanza Creek there is a flow in all of the other tributaries that is more than sufficient to satisfy all of the protestants' uses, and that the applicant is willing and proposes not to divert under its application except when the natural flow of Esperanza Creek is in excess of 0.75 cubic foot per second.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code a field investigation was conducted at the site of the proposed appropriation on July 19, 1949 by an engineer of the Division. Both the applicant and the protestants were present or represented during the investigation.

Records Relied Upon

Application 11815 and all data and information on file therewith.

Discussion

Application 11815 as originally filed and as advertised proposed direct diversion year-round and diversion to storage from November 1 to June 30 of each year.

At the investigation on July 19, 1949 it developed that the applicant's representatives and the protestants present were in agreement that normally there is no surplus, unappropriated water in the stream in question between May 1 and November 1. Those protestants indicated that their protests against the application could be considered withdrawn if the application were amended to restrict diversion to the period extending from November 1 to May 1 of each season.

The applicant by letter dated September 3, 1949 requested that the season of diversion from the natural stream flow under the application be confined to the periods from November 1 to May 1 of each year. The application was amended in accordance with that request. The applicant had previously indicated (by letter dated November 17, 1948) its willingness to limit diversions under the application to times at which the natural flow of Esperanza Creek exceeds 0.75 cubic foot per second.

Water Supply Paper 1061 (U. S. Geological Survey) states that the Calaveras River at Jenny Lind has discharged a 37 year average of 256 cubic feet per second, derived from the 395 square miles tributary thereto. This is equivalent to an average of 256/395 or .648 cubic feet per second per square mile. Inasmuch as the area of watershed tributary to the applicant's proposed points of diversion scales approximately 16.5 square miles

it is probable that the natural flow of the stream at the locality in question has averaged something of the order of 10.7 cubic feet per second, an amount considerably more than enough to satisfy both the amended application and the probable needs of the protestants.

In view of the non-objection by the protestants (except California State Fish and Game Commission) to diversion prior to May 1 and subsequent to November 1 and in view of acceptance by the applicant of an amendment of the application restricting diversion to such period and of the inclusion of a clause in any permit issued, satisfying the objection of California State Fish and Game Commission, it is concluded that the application as amended should be approved and permit issued, subject to the usual terms and conditions and subject also to an appropriate special provision in the matter of maintaining fish life.

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ORDER

Application 11815 for a permit to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11815 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate and subject also to the following special term and condition, to wit:

> "Permittee shall at all times by-pass a minimum of 0.75 cubic foot per second or the natural flow of the stream whenever it is less than 0.75 cubic foot per second at the point of diversion to maintain fish life."

WITNESS my hand and the seal of the Department of Public Works of the State of California this 27th day of December, 1949

EDWARD HYATT, STATE ENGINEER

By A. D. Edmonston
A. D. Edmonston
Assistant State Engineer.